

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

FILED
IN CLERK'S OFFICE
U.S. DISTRICT COURT E.D.N.Y.
★ OCT 23 2014 ★

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GREGORY ALLEN,

BROOKLYN OFFICE

Petitioner,

- against -

NOT FOR PUBLICATION
MEMORANDUM & ORDER
12-CV-05546 (CBA)

SANDRA AMOIA,

Respondent.

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AMON, Chief United States District Judge.

Petitioner Gregory Allen, proceeding pro se, filed the instant petition for a writ of habeas corpus challenging his 2006 conviction of several charges in Queens County Supreme Court. On January 18, 2013, the Court referred Allen's motion to Magistrate Judge Cheryl Pollak for a Report and Recommendation ("R&R"). On September 10, 2013, Magistrate Pollak issued an R&R and provided Allen until September 27, 2013 to file any objections to the R&R.

No party has objected to the R&R, and the time for doing so has passed. When deciding whether to adopt an R&R, a district court "may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge." 28 U.S.C. § 636(b)(1)(C). To accept those portions of the R&R to which no timely objection has been made, "a district court need only satisfy itself that there is no clear error on the face of the record." Jarvis v. N. Am. Globex Fund, L.P., 823 F. Supp. 2d 161, 163 (E.D.N.Y. 2011) (internal quotation marks and citation omitted). This Court has reviewed the record and, finding no clear error, hereby adopts Magistrate Judge Pollak's recommendation as the decision of the Court.¹

¹ The Court declines to adopt the portion of the R&R concluding that Allen procedurally defaulted on his lineup claim. However, since that claim lacks merit, the Court accepts the R&R's recommendation to deny relief on that basis. In addition, while the R&R correctly concluded that Allen's petition was timely, this Court notes that Allen's conviction became final

Accordingly, the Court denies Allen's petition for a writ of habeas corpus. Since Allen has failed to make a "substantial showing of the denial of a constitutional right," a Certificate of Appealability shall not issue. 28 U.S.C. § 2253(c). The Clerk of the Court is directed to enter judgment and to close the case.

SO ORDERED.

Dated: October 21, 2014
Brooklyn, New York

s/Carol Bagley Amon
Carol Bagley Amon
Chief United States District Judge

on January 25, 2010, and finds that he was entitled to statutory tolling from September 4, 2010 until August 15, 2012.